THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 25120 of 1996

Dated: 07.03.2007

Between:

G. Suryanarayana

... Petitioner

AND

The General Manager, Andhra Bank,
Central Office, Hyderabad.

... Respondent

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 25120 of 1996

ORDER:-

This writ petition is filed for a writ of Mandamus to direct the respondent i.e., General Manager, Andhra Bank, Central Office, Hyderabad to implement the judgment and decree in O.S.No.154 of 1988 on the file of the I Additional District Munsif, Machilipatnam dated 26.09.1989 and for a consequential direction to the respondent that he cannot retire the petitioner taking into consideration the wrong date of birth i.e., 20.05.1950 instead of 12.02.1951.

The petitioner is an employee of the Andhra Bank. He filed O.S.No.154 of 1988 on the file of the I Additional District Munsif, Machilipatnam for a declaration that his date of birth is 12.02.1951 and for a mandatory injunction directing defendants 1 and 3 to the suit to effect the change of date of birth in the records concerned. Respondent herein was defendant No.3 to the said suit. By his judgment and decree dated 26.09.1989, the learned I Additional District Munsif, Machilipatnam held that the petitioner's correct date of birth was 12.02.1951 and not 20.05.1950. However, the relief for mandatory injunction against defendants 1 and 3 was

rejected. The petitioner then carried the matter by way of appeal registered as A.S.No.160 of 1989 in the Court of I Additional District Judge, Krishna at Machilipatnam to the extent of rejection of decree by the trial Court for mandatory injunction. The said appeal was partly allowed granting mandatory injunction to defendant No.1 (Director of School Education, Government of Andhra Pradesh, Hyderabad) to correct the entry in the HSLC register. As regards the mandatory injunction claimed against defendant No. 3 to the suit viz., Andhra Bank, the appellate Court after referring to certain judgments of this Court held that the Civil Court has no jurisdiction to give such a direction to the employer to alter the date of birth in the service register and that such a direction by the Court would be void. Therefore, the relief to that extent against defendant No. 3 was declined. This judgment has become final.

In the affidavit filed in support of this writ petition, it is averred that despite the judgment and decree passed in favour of the petitioner holding that his correct date of birth is 12.02.1951, the respondent is refusing to implement the same by altering the entries in the service register of the petitioner.

Heard Sri P.Suresh, learned counsel for the petitioner and Sri K.Lakshminarsimha, learned Standing Counsel representing the respondent.

From the admitted facts, it is clear that though the petitioner filed suit against the Director of School Education, the Nagarjuna University and the Andhra Bank for declaration and also for

mandatory injunction, the Civil Court while granting the declaration as to the correct date of birth of the petitioner, unequivocally declined to grant mandatory injunction against Nagarjuna University and the respondent herein. This judgment and decree was affirmed as regards defendants 2 and 3 while mandatory injunction granted by the appellate Court was confined only to the 1st defendant viz., Director of School Education. Having failed to convince the Civil Court to grant mandatory injunction against the respondent herein, the petitioner is not entitled to any relief in this writ petition. Moreover, the relief sought for in this writ petition is for a direction to implement the judgment and decree in O.S.No.154 of 1988 dated 26.09.1989 on the file of the I Additional District Munsif, Machilipatnam. In the absence of mandatory injunction, which was specifically rejected by the Civil Court as well as the appellate Court, there is nothing for the respondent to implement the judgment and decree, which relates to mere declaration of his date of birth. It is significant that the petitioner has not sought for any substantive relief of a direction to the respondent to carry out alteration of entries in the service register of the petitioner.

Learned counsel for the petitioner relied upon a Division Bench judgment of this Court in **K. MADHAVA SASTRY v DIRECTOR, POSTGRADUATE CENTRE, ANANTAPUR**[1]. In that case, the petitioner therein filed a suit for mere declaration that his correct date of birth was 29.12.1921 and the Director, Postgraduate Centre, Anantapur, the employer was a party to the

said suit. Unlike in this case specific relief of mandatory injunction to correct the date of birth in the service register was not sought for by him.

On the factual situation of that case, the Division Bench of this Court held that the Director, Postgraduate Centre, Anantapur being a party to the suit, it is not open to it to refuse to carry out the entry in the service register as per the declaration made by the Civil Court. As already narrated hereinabove, we have a different set of facts in the present case, where the petitioner sought for the relief of mandatory injunction against the respondent and failed to convince both the trial and appellate Courts to grant mandatory injunction for correction of entry in the service register.

Having failed to get the relief from the Civil Courts, the petitioner cannot maintain the present writ petition for the relief which he was unsuccessful in getting in the Civil Court and in the appeal filed there against.

For the aforegoing reasons, the writ petition fails and is accordingly dismissed. No costs.

C.V. NAGARJUNA REDDY, J

Date: 07.03.2007
ES

[1] 1980 (2) APLJ 413